Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-1733

W. D. R.,

Appellant,

VS.

TAYLOR COUNTY CHILD WELFARE UNIT,

Appellee.

ON APPEAL FROM THE
TEXAS COURT OF CIVIL APPEALS
11TH SUPREME JUDICIAL DISTRICT

JURISDICTIONAL STATEMENT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. _____

W. D. R.,
Appellant

VS.

Taylor County Child Welfare Unit,
Appellee

Pursuant to Rules 13(2) and 15 of the Rules of the Supreme Court of the United States, W. D. R., Appellant, files this statement of basis upon which it is contended the Supreme Court of the United States has jurisdiction to review the judgment entered by the Texas Supreme Court affirming the decision of the Texas Court of Civil Appeals, 11th Supreme Judicial District in this case, and why the United States Supreme

Court should exercise jurisdiction herein.

OPINIONS BELOW

The opinion of the Texas Court of Civil Appeals, 11th Supreme Judicial District, sitting at Eastland, Texas appears in Cause No. 5349, styled: W. D. R., Appellant vs. Taylor County Child Welfare Unit, Appellee, and is included herein as Appendix B, infra.

This opinion has not yet been reported in the Reporter Systems.

The judgment of the 326th District Court in and for Taylor County, Texas and the order of the Texas Supreme Court are set forth in Appendix A and Appendix C, respectively, infra.

GROUNDS OF JURISDICTION OF SUPREME COURT

This appeal arises from an action by Taylor County Child Welfare Unit against the mother and father of four small children seeking to terminate parental rights.

These proceedings actually began as far back as July 20, 1978 when the

appellee changed his mind about a previous order they had sought July 11, 1978 in which they had recommended the mother, and appellant, herein to be managing conservator of these four small children.

In the Motion for New Trial, they alleged the father, who at the time, was caring for the children in a vastly superior way, should be the managing conservator of the children, and that it would be in the Best Interest of the children that a change in custody should be made. There is no record that either appellant or her husband was given any notice of this hearing in which the previous Court decision was set aside, and though the appellant apparently did not know of this hearing, nor had counsel been secured, the first evidence of due process, equal protection of the laws violations occurs, where under the star chamber evidence presented by the appellee, the Court deemed it in the Best Interest of the child

to grant a new trial.

Then, inconsistent with their allegations made in the Motion for New Trial, that the father was adequately caring for the children, the appellee, on the same day filed a petition to terminate the parental rights of both the appellant and appellant's husband.

The Motion for New Trial and the Petition to terminate parental rights appears fully stated in Appendix A_2.

Again, appearing in this petition, not for the first time, was the term "Best Interests", and additionally included was vague and inconclusive statutory language alleging that appellant had knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endangers the physical or emotional well being of the children, or engaged in conduct, or knowingly placed the children with persons who engaged in conduct which endangers the physical

or emotional well being of the children, all of which appellant complains about.

The usual temporary hearings were held as required by Chapter 17, Texas Family Code, and presumably the Court, by a preponderance of the evidence, and assistance of the newly Court appointed attorney for the children, made Taylor County Child Welfare managing conservator of the appellant's children.

Appellant and her husband appeared without counsel. Again, the thread of "Best Interest" that weaves its way throughout the entire Family Code was the primary consideration.

Finally, August 29, 1978, the day final hearing was to be had on the termination proceedings, appellant finally secured the services of a Legal Aid lawyer who began that day to protect appellant's constitutional rights to due process and equal protection of the law. Among other matters set up as a defense in appellant's answer filed by this Legal Aid lawyer,

the vague language of Chapter 15.02 and 15.02(2) which appellant was subjected to, was constitutionally attacked.

The trial was then continued.

A jury trial was finally held in January of 1979 at which time appellant's parental rights were terminated.

Appellant continued to plead for vindication of her constitutional privilege, but to no avail in the Trial Court.

Appellant objected to the form and manner of the Court's charge to the jury based upon the vague and inconclusive language used in Chapter 15.02 and 15.02(2) of the Texas Family Code. See Appendix A_3 for appellant's constitutional objections to this charge.

Appellant then sought relief in the Court of Civil Appeals. That Court found appellant's complaints that she had been denied due process of law, and equal protection of the laws as mandated by the United States

Constitution were not meritorious.

The Texas Supreme Court agreed and found no reversible error upon appellant's application for writ of error and on February 13, 1980 denied appellant's Motion for Rehearing.

The Court of Civil Appeals specifically found Chapter 15.02 and 15.02(2) constitutional.

This appellant, having exhausted all remedies which could be exercised in a State Court to vindicate her constitutional rights, now seeks direct relief from this honorable Court of last resort.

STATUTES INVOLVED

The applicable statutes involved in this appeal are Chapters 15.02, 15.02(2), Texas Family Code.

The relevant parts of this statute as was applied to appellant are as follows:

(d). knowingly placed or knowingly allowed the child to remain in conditions

or surroundings which endangers the physical or emotional well being of the child; or

(e). engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well being of the child

(2). Termination is in the best interest of the child.

The statutes are set out in their entirety in Appendix D, infra.

QUESTIONS PRESENTED

I.

That Chapter 15.02 and 15.02(2), Texas Family Code, as applied to appellant, is so vague, indefinite, and overbroad as to deny appellant fundamental due process and equal protection of the law as guaranteed by the United States Constitution.

STATEMENT OF THE CASE

Appellant has heretofore stated her case, as well as her grounds of jurisdiction of the Supreme Court.

Appellant does, however, specifically invoke the jurisdiction of this Court by the authority vested in Title 28, U.S.C., section 1257(2).

SUBSTANTIALITY OF FEDERAL QUESTION

This appeal presents important and substantial Federal questions.

Similar to No. 79-5932 - Doe vs. Delaware now before this Court, appellant likewise complains of an undefinable term which threads its way through the entire Texas Family Code annually affecting the thousands of Texas citizens who come before the Texas Courts seeking divorce, custody, change of custody, termination of parental rights and adoption.

This term also found in Chapter 15.02(2) of the Texas termination of parental rights statute is particularly onerous when coupled with the

vague, inclusive, and overbroad language of 15.02 Texas Family Code which in reality makes the Trial Court a Court of last resort, for any worthy appellant is constrained to defend or attack upon appeal the evidence arising from decisions based upon this statutory language.

As the Texas statute now stands, the State can invoke the compelling State interest in the health, safety and welfare of our children through the purely subjective standards allowed by the Texas termination statute.

Without objective criteria sufficient enough to provide notice to potential defendants of what the statute purports to do, or specific statutory language enabling a defendent to understand what he is charged with when served with citation and pleading, sufficiently enough for him to set up his defense, or clearly ascertain what the Trial Court's findings actually were, so that an appellate attack can be mounted on

those findings, then all the work and intent of this Court in establishing the sanctity, and privacy of the home has gone for naught. No longer will the citizens of Texas have a right to family integrity rooted in the common law traditions of our culture and collective conscience of the American people as established by Griswold vs. Connecticut, 381 U.S. 479 (1965); or a Fourteenth Amendment right to establish a home and bring up children, Myer vs. Nebraska, 262, U.S. 390 (1963); Pierce vs. Society of Sisters, 268 U.S. 510 (1925); or the right to regard the care, custody, management and companionship of our children as the most precious of personal liberties, as says May vs. Anderson, 345 U.S. 528; nor will a Texas citizen ever be able to consider possession and care of his child as an "essential" and "one of the basic civil rights of man", Stanley vs. Illinois, 405 U.S. 645 (1972), Skinner vs. Oklahoma, 316 U.S. 536 (1942) and particularly

onerous is that such impermissible statutory language found in Chapters 15.02 and 15.02(2) allows social workers, the Courts, and the uneducated as is often found on our jury panels, to discriminate against the black, the brown, the poor, and those who, within the lawful bounds of our society, choose to step to the tune of a different drummer, all because of who they are, or what they choose to be meets with personal disfavor of those sitting in judgment who have the unfettered discretion to apply their subjective opinions of what "Best Interest" should be.

The Texas statutes under attack here have a striking similarity to those found unconstitutional by an appellate Court in Alsager vs. District Court of Polk County, Iowa, 406 F Supp. 10 (S.D. Iowa, 1975).

The Alsagers' rights were ultimately vindicated, but how do you ever vindicate the five year loss of those precious family rights that we all

cherish. How many times during these five long years did the children cry for their mother, or the father come home from work to an empty home.

Before the State should be allowed to terminate parental rights, more should be required than termination from a statute which can terminate without mens rea, those who come before it through accidental, unknowing, or unconscious conduct.

No amount of logic or judicial twisting of the language of this Texas termination statute can make it satisfy the criteria established by Connally vs. General Construction Company, 269 U.S. 385, 391 (1926), and United States vs. Cohen Grocery Co., 255 U.S. 81, 89 (1921) which early on stated that:

(1). The statutes language must be sufficiently specific that a person of ordinary intelligence must not have to guess at its meaning.

(2). The statute must contain ascertainible standards

by which it may be applied - that is, it does not leave to a judge or jury unfettered discretion.

The Texas statute miserably fails this test. Though appellant does not doubt that the primary consideration of the welfare of the child is paramount in our Court system, such noble purposes also permit the State, or those seeking custody of a child, "squatters rights" because such statute allows unfettered discrimination disfavoring the rights of the poor parent, the non conformist parent, the uneducated parent, the very young parent, and those parents who are incapable at time of trial, of providing a Court approved level of care to their children because of temporary family disruptions, pre divorce crisis, or lack of knowledge in proper child rearing procedures. E.g., Brokenleg vs. Butts, 559 SW_2 853 (1977); Owen vs. Owen, 558 SW_2 63, (1977), Daniels vs. Daniels, 414 SW_2 207, (1967), reh. den.; Smith vs.

Organization of Foster Families, 431 U.S. 816 (1977).

Furthermore, even where deficient statutory language is at issue, it must be considered an abuse of discretion, and a denial of due process and equal protection of the laws if one of the parties to a termination proceeding is held to a higher standard of compliance to the technical rules of pleading and practice, while the other party was given the benefit of every provision for the flexibility the law allowed. The record reveals this is exactly what happened in the instant case. The basic minimum requirement should be that a Trial Court at least apply the pleading fairly and equitably to both parties. But this did not occur here.

Appellant objected to the Court's charge which merely tracked the vague and inconclusive statute complained of.

Yet, in appellant's circumstances, the Appellate Court found nothing wrong with broad global submission of the

issues affecting appellant, though the very same Appellate Courts are demanding a higher standard of a trial judge, hearing the matter before the Court rather than before a jury.

For example, in a non jury trial, the Amarillo Court of Civil Appeals pointed out that parents engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangers the physical and emotional well-being of the children is not a finding that they knowingly placed the children with persons who engaged in such conduct, In the Interest of S. H. 548 SW_2 804 (Tx. Civ. App. Amarillo, 1977).

The Trial Court's findings must be positive findings, Matthews vs. Simmons, 589 SW_2 156 (CCA, Tyler).

It would thus seem that fairness and equity would demand the Trial Court impose the same strict standards as he must impose upon himself.

To require less of a jury than what is imposed upon the Trial Court

in termination proceedings is a clear example of the abuse of discretion that comes from an unconstitutional statute.

Appellant has been denied due process and equal protection of the laws, and an important right to notice of exactly what facts the trial jury found that resulted in termination of her parental rights, thus effectively preventing her appeal upon the traditional insufficient evidence - no evidence points of error.

The United States Supreme Court must halt these impermissible practices. Such practices are not in keeping with the close scrutiny that Texas requires of termination suits, yet apparently only pays lip service to.

In the Matter of R. E. W., 545 SW_2 573, (Tx. Civ. App., Houston 1st Dist.), (1977, Writ ref'd. n.r.e., Wiley vs. Spratlan, 543 SW_2 349 (Tx. 1976) and In the Interest of G. M. et. al, Children, a Texas Supreme Court decision rendered March 19, 1980,

No. B, 8515.

CONCLUSION

For these reasons, this Court should take jurisdiction of this appeal.

Respectfully submitted,

WILLIAM D. DUPREE
West Texas Legal Services
The Lawyers Building
100 Main Street
Fort Worth, Texas 76102
(817) 336-3943

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I, WILLIAM D. DUPREE, Attorney for Appellant, do hereby certify that I mailed three (3) true and correct copies of the foregoing Jurisdictional Statement, with first class postage prepaid to:

Ms. Sharon Johnson
Attorney for Appellee
Assistant District Attorney
Taylor County Courthouse
Abilene, Texas 79602

Hon. Mark White
Attorney General
State Capitol
Austin, Texas 78711

on this 30 day of April, 1980. I further certify that all parties required to be served have been served.

WILLIAM D. DUPREE

APPENDIX A-1

IN THE INTEREST OF MARY FRANCES ROBERTS,	§	IN THE 326TH
LINDA RUTH ROBERTS, THOMAS WILLIAM	§	DISTRICT COURT OF
ROBERTS, AND DAVID LEE ROBERTS,	§	TAYLOR COUNTY,
CHILDREN	§	TEXAS

DECREE OF TERMINATION

On the fifteenth day of January, 1979, Petitioner appeared in person and by attorney and announced ready for trial.

Respondent, Willa Dene Roberts, appeared in person and by attorney and announced ready for trial.

Respondent, Thomas Lee Riley Roberts, appeared in person and announced ready for trial.

Also appearing was Stan Brown, appointed by the Court as guardian ad litem of the children the subject of this suit.

The court having considered the pleadings and heard the evidence and

argument of counsel, finds that all necessary prerequsites of the law have been legally satisfied and that this Court has jurisdiction over the parties and subject matter of this cause.

Upon the close of all the evidence and argument by counsel, this cause as it effects the parental rights of Willa Dene Roberts and Thomas Lee Riley Roberts was submitted to a jury on special issues which found the following:

That from clear and convincing evidence Willa Dene Roberts knowingly placed or allowed the children to remain in conditions or surroundings which endangered the physical or emotional well being of the children.

That from clear and convincing evidence Willa Dene Roberts has engaged in conduct and knowingly placed the children with persons who engaged in conduct which endangered the physical or emotional well being of the children.

That from clear and convincing evidence termination of the parent-

child relationship between Willa Dene Roberts and the children would be in the best interest of the children.

That from clear and convincing evidence Thomas Lee Riley Roberts knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endanger the physical or emotional well-being of the children.

That from clear and convincing evidence Thomas Lee Riley Roberts engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangers the physical or emotional well-being of the children.

That from clear and convincing evidence Thomas Lee Riley Roberts failed to support the children in accordance with his ability during the period of one year ending within six months of the date of filing of this petition.

That from clear and convincing evidence termination of the parent-child relationship between Thomas Lee Riley Roberts and the children would be in the best interest of the child-

ren.

That from clear and convincing evidence, and considering the best interest of the children, Taylor County Child Welfare Unit, Department of Human Resources, should be appointed managing conservator of the children.

Therefore, the Court finds that the following orders for the safety and welfare of the children are in the best interest of the children who are the subject of this suit.

IT IS ORDERED AND DECREED that the parent-child relationship between Willa Dene Roberts and the children the subject of this suit be and it is hereby terminated.

IT IS FURTHER ORDERED that the parent-child relationship between Thomas Lee Riley Roberts and the children the subject of this suit be and it is hereby terminated.

IT IS FURTHER ORDERED that Buela Wynne Love, Supervisor, Taylor County Child Welfare Unit, Department of Human Resources, or her successors in office,

be and is hereby appointed managing conservator of the children the subject of this suit.

IT IS ORDERED that the managing conservator shall have all the rights, privileges, duties, and powers of a parent, to the exclusion of the other parent, subject to the rights, privileges, duties, and powers granted to any possessery conservator named in this order.

IT IS ORDERED that all records in this case, including the minutes, be sealed.

SIGNED this 2nd day of February, 1979.

HENRY J. STRAUSS
Judge, 326th
District Court
Taylor County, Texas

Approved as to form:

WILLIAM D. DUPREE
Attorney for Respondent

STAN BROWN
Guardian as litem

ROBERT CARTER
Attorney for Petitioner

Endorsed: 645-C In Re: mary Frances,

Linda Ruth, Thomas William, & DAvid Lee Roberts, Children. Decree of Termination Recprdedin Vol. 3 PG. 359

APPENDIX A-2

IN THE INTEREST OF MARY FRANCES ROBERTS,	§	IN THE 326TH
LINDA RUTH ROBERTS, THOMAS WILLIAM	§	COURT OF
ROBERTS, AND DAVID LEE ROBERTS,	§	TAYLOR COUNTY,
CHILDREN	§	TEXAS

MOTION FOR NEW TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the Movant, Taylor County Child Welfare Unit, Texas Department of Human Resources, and would move this Honorable Court to grant a new trial in this cause and as grounds for same would show the Court as follows:

I.

Taylor County Child Welfare Unit has been involved with the mother of the subject children, Willa Dene Roberts, for a number of years and has facts and evidence to present to this Court which shows, as a matter of law, that it is not in the best interest

of the subject children that the mother be managing conservator as provided for in "Judgment in a Suit Affecting the Parent-Child Relationship" signed by this Honorable Court on July 11, 1978.

II.

Movant has evidence to present to this Court which would show that at the time of the signing of the judgment in this cause, the father, Thomas Lee Roberts, was caring for the children in a way vastly superior to the care of the mother is capable of and has in the past provided the children and that as a result of the judgment signed on July 11, 1978 by this Court, the children were removed from the father's care and placed in the mother's care, which care is not existent and positively harmful and detrimental to the welfare of the children, as a matter of law.

III.

Taylor County Child Welfare Unit, Movant herein, was not consulted by that branch of the Texas Department

of Human Resources that came before this Honorable Court and requested this judgment. No evidence was presented to this Court that would show that it is in the best interest of the children that the mother be appointed managing conservator of the children. Movant in fact has evidence to the contrary that would show overwhelmingly, as a matter of law, that the mother is not capable of providing for the physical and emotional needs of the children.

IV.

Movant has on this date filed its Original Petition to Terminate Parent-Child Relationship of both father and mother and has requested emergency protection orders for the four children

V.

Movant has conferred with Robert T. Burton, the attorney for the Department of Human Resources who obtained the judgment that Movant desires to have set aside.

WHEREFORE, PREMISES CONSIDERED,

Movant prays that the Court would set aside its judgment signed July 11, 1978 in this cause and that it would grant a new trial in which Movant could participate as a full party for the purpose of terminating the parental rights of the mother and the father and in which Petitioner, Texas Department of Human Resources, by and through its attorney, Robert T. Burton, could show any evidence which it might have to the effect that the father should be retained as a possessory conservator of the children with the responsibility of paying child support as ordered in said judgment which Movant prays the Court to set aside and to grant a new trial.

Respectfully submitted,

R. Jack Grant,
Assistant District
Attorney
Taylor County

ATTORNEY FOR MOVANT

APPROVED BY:

ROBERT T. BURTON

Motion for New Trial granted, this

20th day of July, 1978.

HENRY J. STRAUSS
JUDGE

Endorsed: 645-C In Re: Mary Frances, Linda Ruth, Thomas William Roberts, & David Lee Roberts, Children. Filed: July 20, 1978

Motion For New Trial

IN THE INTEREST OF MARY FRANCES ROBERTS,	§	IN THE 326TH
LINDA RUTH ROBERTS, THOMAS WILLIAM	§	COURT OF
ROBERTS, AND DAVID LEE ROBERTS,	§	TAYLOR COUNTY,
CHILDREN	§	TEXAS

ORIGINAL PETITION
TO TERMINATE PARENT-CHILD RELATIONSHIP

This suit is brought by Taylor County Child Welfare Unit, Texas Department of Human Resources, 317 Pecan, Abilene, Taylor County, Texas, pursuant to its statutory authority.

Petitioner is not related to the children the subject of this suit.

I.

This Court has continuing jurisdiction of this suit and of the children the subject of this suit.

II.

The following children are the subject of this suit:

NAME: Mary Frances Roberts
SEX: Female
BIRTHPLACE: Abilene, Texas

BIRTH DATE: January 17, 1974
PRESENT RESIDENCE: 1601 Mesquite,
Abilene, Texas 79601

NAME: Linda Ruth Roberts
SEX: Female
BIRTHPLACE: Abilene, Texas
BIRTH DATE: May 13, 1975
PRESENT RESIDENCE: 1601 Mesquite,
Abilene, Texas 79601

NAME: Thomas William Roberts
SEX: Male
BIRTHPLACE: Abilene, Texas
BIRTH DATE: September 1, 1976
PRESENT RESIDENCE: 1601 Mesquite,
Abilene, Texas 79601

NAME: David Lee Roberts
SEX: Male
BIRTHPLACE: Abilene, Texas
BIRTH DATE: April 30, 1978
PRESENT RESIDENCE: 1601 Mesquite,
Abilene, Texas 79601

III.

The mother of the children is Willa Dene Kirk Roberts, who is 36 years of age and who resides at 1601 Mesquite, Abilene, Texas.

Process should served at that address.

The father of the children is Thomas Lee Riley Roberts, whose age is unknown and who resides at that

address.

The mother was appointed managing conservator of the children under a judgment of this Court in this cause number of July 11, 1978.

The father was appointed possessory conservator of the children with the duty of child support in the amount of Two Hundred Dollars ($200) per month by judgment of this Court in this cause, which judgment was signed on July 11, 1978.

These are the only persons have a court-ordered relationship with the children at the present time.

IV.

No property is owned or possessed by the children the subject of this suit.

V.

Termination of the parent-child relationship between Willa Dene Kirk Roberts and the children is in the best interest of the children, and such termination is requested. As further grounds for termination, Petitioner

alleges that this parent has:

knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endanger the physical or emotional well-being of the children.

engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangers the physical or emotional well-being of the children.

executed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by section 15.03 of the Texas Family Code. This affidavit of relinquishment is attached to this petition or will be filed herein.

VI.

Termination of the parent-child relationship between Thomas Lee Riley Roberts and the children is in tbe best interest of the children, and such termination is requested. As further grounds for termination, Petitioner alleges that this parent has:

voluntarily left the child-

ren alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the children and remained away for a period of at least three months.

voluntarily left the children alone or in the possession of another not the parent and, although expressing an intent to return, failed to do so without providing adequate support of the children and remained away for a period of at least six months.

knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endanger the physical or emotional well-being of the children.

engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangers the physical or emotional well-being of the children.

failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of this petition.

executed an unrevoked or irrevocable affidavit of relin-

quishment of parental rights as provided by section 15.03 of the Texas Family Code. This affidavit of relinquishment is attached to this petition or will be filed herein.

VII.

Appointment of Taylor County Child Welfare Unit, Department of Human Resources, 317 Pecan, Abilene, Texas as managing conservator is in the best interest of the children.

VII.

Petitioner requests the Court to appoint a guardian ad litem to represent the interests of the children.

IX.

Petitioner would show the Court that there is an immediate danger to the health and physical safety and well-being of the subject children for the reason that the mother of the children is incapable of caring for the physical and emotional needs of the children. The children are not fed properly, not cleaned properly, not supervised properly, and are in

a poor state of physical health because of the mother's neglect and lack of ability to care for the children.

The mother of the children has threatened to kill herself and all of the children if Petitioner intervenes to take the children for their welfare and safety. Petitioner has reason to believe that the mother is a person capable of violence who does not understand the consequences of her violent actions and Petitioner is in fear for the safety and welfare of Petitioner's workers who may go to the home to take possession of the children.

Petitioner requests the Court to issue a writ of attachment directing the Sheriff of Taylor County, Texas to sieze the children and to bring them before the Court immediately for further order of the Court.

Petitioner, in the alternative, would request the Court to issue its writ of attachment to the Sheriff of Taylor County, Texas and after hearing

in which evidence is presented in support of the allegations made herein, to issue its order naming Petitioner as temporary managing conservator of the children and to set its date for a show-cause hearing within ten (10) days of the initial hearing herein at which time the natural mother and the natural father would be given opportunity to show cause why Petitioner should not be named temporary managing conservator pending the final disposition of the permanent relief requested in this pleading.

Petitioner would show the Court that these children are in immediate danger of their physical safety and in immediate danger of emotional infury. Petitioner believes that the naming of Petitioner as temporary managing conservator is required for the care and protection of the children and so request the Court to name Petitioner temporary managing conservator.

PRAYER

Petitioner prays that citation

and notice issue as required by law. Petitioner prays that the Court determine what parent-child relationships exist between the children and any other persons and that all such parent-child relationships be terminated.

Petitioner prays for general relief.

_____
R. Jack Grant,
Assistant District
Attorney
Taylor County, Texas

THE STATE OF TEXAS
COUNTY OF TAYLOR

I have read the foregoing allegations in the Original Petition to Terminate Parent-Child Relationship and state, under oath, that the factual allegations contained therein are true and correct.

_____
Buela Wynne Love

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned Notary Public,

on this the 20th day of July, 1978.

_____
Notary Public in and for
Taylor County, Texas

Endorsed: 645-C In Re: Mary Frances, Linda Ruth, & Thomas William Roberts, DAvid Lee Roberts, Children, Filed: July 20,=1978, Original Petition to Terminate Parent/Child RElationship.

APPENDIX A-3

OBJECTIONS TO COURT'S CHARGE

Mr. DUPREE: Okay. On Page 3, Item 11-B, under instructions, which state that the best interest of the children shall always be your primary consideration in answering the issues, that we object specifically to that portion of the Court's charge as to instructions, what the term best interest is, and not having a guideline, a statutory guideline to determine what the best interest of the child is, then denies my client sufficiently enough that she can do according to statutory mandate what is within the best interest of the child. The fact that the term best interest is not defined to the Jury denies my client the rights of due process. It denies her other constitutional rights because the term best interest is a vague, amorphous word. It is void of any meaning. Different people from different backgrounds, different training, different education, can attach different meanings

to the term best interest, and thus, as is applied to the Respondent, Willa Dean Roberts, it is unconstitutionally vague and so we object to that definition. We further object to Special Issue Number One in that the term knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endanger the physical or emotional wellbeing of the children. This portion does not aprize the Respondent of what the Jury findgins are. It is vague, it is not definite enough to show whether they are finding from this particular special issue, whether she knowingly placed the children in conditions or surroundings which endanger the physical health or emotional wellbeing of the children or whether she knowingly allowed the children to remain in conditions or surroundings which endanger the physical or emotional wellbeing of the children, and this particular -- this particular special issue doesn't allow the certainty that would therefore

be required.

Special Issue Number Two, I object for the same reasons, again, that there should be as in the first special issue separate issue submission as to whether or not she engaged in conduct which endangered the children, or, their emotional wellbeing, or, she knowingly placed the children in circumstances which endanger the physical or emotional wellbeing.

In both Special Issue Number One and Special Issue Number Two, does not tell us in what way the Jury is finding. It is indefinite, and it is vague, and the Respondent is denied notice or knowledge of just what, in these two special issues, the prosecutor is alleging that she has done, which would deny her the access to her children.

Okay. Special Issue Number Four, again, there is a term best interest used, and again, we say that this term is improper to be used without the appropriate definition, sta-

tutory definition of what best interest is, because of its unconstitutional vagueness.

Now, in addition to these objections, the Respondent feels that based upon her theory of defense in this case, the evidence of the Respondent's defense being developed in the course of the trial, that she is entitled to an affirmative defensive issue or special issues. This entitlement to these special issues that will herein be requested are supported in case law in the matter of REW, 545 Southwestern Second, 373, which Respondent feels entitle her to the following issues: The Respondent's attorney has submitted, or will shortly submit to the Court in writing, as well as making his oral objections, that these two special issues should have been allowed: Do you find from clear and convincing evidence that Respondent failed to provide a desirable degree of care for her minor children and, then, in addition to that special issue, do you

find from a clear and convincing evidence that Respondent's failure to provide a desirable degree of care for her minor children was due solely to lack of intelligence, training or misfortune. We feel that based on the reasons I have herein given, these two special issues should have been allowed the Respondent as a defense to the charges of termination brought against her, and in open Court, I tender to the Court in writing my objections to this, as I have also made to the Court Reporter, to which I ask the Court to either grant or refuse.

THE COURT: All right. As far as the two special issues that Respondent has requested, the Court hereby refuses to submit these two special issues.

MR. DUPREE: To which the Respondent's attorney asks that his exception to the denial of his request for special issues be noted.

Thank you, Your Honor. This concludes my objections.

THE COURT: Mr. Roberts, do you have anything?

MR. ROBERTS: No, sir.

THE COURT: Mr. Brown?

MR. BROWN: No, Your Honor.

(Thereupon the Charge of the Court was read to the Jury, Arguments of Counsel were had, and the Jury began deliberations at 2:30 p.m.)

APPENDIX B

W. D. R.

Appellant

Vs. No. 5349--Appeal from Taylor County

Taylor County Child Welfare Unit

Appellee

Taylor County Child Welfare Unit, a division of the Texas Department of Human Resources, brought suit against the mother and father of four small children, seeking to terminate their parental rights.Following a jury trial, judgment was entered terminating the parental rights of both parents and naming the Taylor County Child Welfare Unit as managing conservator of the four children. The mother, W. D. R., appeals. We affirm.

The jury found, among other things, the mother knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endangered their physical or emotional well-being. The mother

contends there is no evidence, or alternatively, factually insufficient evidence to support such finding. We disagree.

In reviewing the no evidence point, we must review the evidence in its most favorable light, considering only the evidence and inferences which support the finding, and rejecting the evidence and inferences contrary to the finding. Martinez v. Delta Brands, Inc., 515 S.W.2d 263 (Tex.1974). We must consider all the evidence in deciding the factually insufficient point. In re King's Estate, 244 S.W. 2d 660 (Tex.1951).

We have carefully examined the entire record and see no purpose in expressly outlining the evidence. The statement of facts graphically demonstrates that the children were living in deplorable conditions. The house was a pool of filth. The children were infected with lice and impetigo. They were not provided proper medical care by the mother. There

is testimony that the mother failed to effectively improve the filthy conditions after she had been carefully instructed that her acts and omissions were hazardous to the children. The children exhibited retarded development skills while in the mother's care which were corrected after placement in foster care. There is sufficient evidence that the mother's failure to properly care for the children was due to a lack of motivation on her part, and was not solely the result of her misfortune of lack of education and training. We hold there is some evidence to support the jury's finding, and the evidence is factually sufficient to support the finding.

The mother next argues the court erred in the form of the submitted issue. She says she is unable to properly prepare her appeal because as submitted, she cannot determine if the jury found (1) that she knowingly placed, or (2) that she knowingly allowed, the children to remain in conditions

or surroundings which endangered their (3) physical or (4) emotional well-being. Tex.R.Civ.P. 277, provides, "It shall not be objectionable that a question is general or includes a combination of elements or issues." The point is overruled.

We also overrule the mother's points attacking the constitutionality of the Tex. FAM. CODE ANN. § 15.02 D-F v. State, 525 S.W.2d 933 (Tex.Civ. App. - Houston (1st Dist.) 1975, no writ); Sanchez v. Texas Department of Human Resources, 581 S.W.2d 260 (TEX.CIV.APP. - Corpus Christi 1979, no writ).

We have considered all points of error, and all are overruled. Judgment of the trial court is affirmed. It is further ordered that this opinion not be published in accordance with TEX.R.CIV.P. 452.

AUSTIN McCLOUD
CHIEF JUSTICE

October 4, 1979

APPENDIX C

CLERK'S OFFICE - SUPREME COURT

Austin, Texas, February 13, 1980

Dear Sir:

You are hereby notified that the Motion for Rehearing in the case of B-9025, W.D.R. vs. TAYLOR COUNTY CHILD WELFARE UNIT

was this day overruled.

Very truly yours,
GARSON R. JACKSON,
Clerk

APPENDIX D

TEXAS FAMILY CODE

§15.02 Involuatary Termination of Parental Rights

A petition requesting termination of the parent-child relationship with respect to a parent who is not the petitioner may be granted if the court finds that:

(1) the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return; or

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remianed away for a period of at least three months; or

(C) voluntarily left the child alone or in the posses-

sion of another not the parent and, although expressing an intent to return, failed to do so without providing adequate support of the child and remained away for a period of at least six months; or

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child; or

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child; or

(F) failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition; or

(G) abandoned the child

without identifying the child or furnishing means of identification, and the child's identify cannot be ascertained by the exercise of reasonable diligence; or

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since birth; or;

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Section 34.05 of this code; or;

(J) been the major cause

of:

(i) the failure of the child to be enrolled in school as required by the Texas Education Code; or

(ii) the child's absence from his home without the consent of his parents or guardian for a substantial length of time or without the intent to return; or

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by Section 15.03 of this code; and in addition, the court further finds that

(2) termination is in the best interest of the child.

Amended by Acts 1975, 64th Leg., p. 1266, ch. 476, §31, eff. Sept. 1, 1975.

NO. B-9025

W.D.R.	§	IN THE SUPREME COURT
VS.	§	OF TEXAS AT
TAYLOR COUNTY CHILD WELFARE UNIT	§	AUSTIN, TEXAS

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that WILLA DENE ROBERTS, Appellant in the above styled and numbered cause, hereby appeals to the Supreme Court of the United States from the final judgment of the Texas Supreme Court affirming the decision of the Eastland Texas Court of Civil Appeals, Eleventh Supreme Judicial District, entered in this cause on February 13, 1980, finding that the form and submission of the Trial Courts charge and submission of Special Issues did not deny Appellant her right to adequately prepare her case for appeal, thus creating reversible error, and further finding the "Best Interest" test constitutional, and that Chapter 15.02 of the Texas Family Code

is constitutional.

This appeal is taken pursuant to Title 28, United States Code, Section 1257, Subparagraph 2.

DATED this 21 day of Feb., 1980.

WILLIAM D. DUPREE
Attorney for Appellant
West Texas Legal Services
Lawyers Building
100 Main Street
Fort Worth, Texas 76102
(817) 336-3943

CERTIFICATE OF SERVICE

I, WILLIAM D. DUPREE, a member of the Bar of the Supreme Court of the United States and counsel of record for WILLA DENE ROBERTS, Appellant herein, hereby certify that on the 21st day of February, 1980, pursuant to Rule 33, Rules of the Supreme Court, served three copies of the foregoing Notice of Appeal to the Supreme Court of the United States, on each of the parties herein, as follows:

Ms. Sharon Johnson
Attorney for Appellee
Assistant District Attorney
Taylor County Courthouse
Abilene, Texas 79602

Hon. Mark White
Attorney General
State Capitol
Austin, Texas 78711

by depositing such copies in the United States Mail, Fort Worth, Texas, with first class postage, prepaid, properly addressed to the Post Office address

of the said Ms. Sharon Johnson, attorney of record for Appellee, and the Hon. Mark White, Attorney General, State of Texas at Austin, Texas.

All parties required to be served have been served.

DATED this 21st day of February, 1980.

WILLIAM D. DUPREE

FILED
JUL 17 198
MICHAEL RODAK, JR.

NO. 79-1733

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

W. D. R.,
Appellant,

VS.

TAYLOR COUNTY CHILD WELFARE UNIT,
Appellee.

ON APPEAL FROM THE
SUPREME COURT OF TEXAS

MOTION TO DISMISS OR AFFIRM

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-1733

W. D. R.,
Appellant

VS.

Taylor County Child Welfare Unit,
Appellee

MOTION TO DISMISS OR AFFIRM

The Taylor County Child Welfare Unit, Appellee, moves the Court to dismiss the appeal filed herein or, in the alternative, to affirm the judgment of the Supreme Court of Texas on the ground that it is manifest that the question on which the decision of this cause depends is so insubstantial as to need no further argument.

I.

STATUTE INVOLVED

This appeal questions the validity of portions of Section 15.02 of the Texas Family Code. The statute governs termination of the parent-child relationship in the State of Texas. Section 15.02(1) sets forth eleven specific grounds which may be the basis of a suit to terminate the parent-child relationship. The court must find that at least one of these grounds exists in order to grant a petition requesting termination.

In the case at bar, termination was based on subsections (D) and (E) of Section 15.02(1), which read as follows:

> 15.02(1) the parent has
> (D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;
> (E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-

being of the child.

In addition to finding the existence of one or more of the grounds set forth in Section 15.02(1), the Texas statute requires the court to make an affirmative finding under Section 15.02(2), which reads as follows:

> 15.02(2) termination is in the best interest of the child.

II.

NATURE OF THE CASE

In July, 1978, the Taylor County Child Welfare Unit, Appellee herein, filed a Petition to Terminate the Parent-Child Relationship between Appellant and her four minor children. Following a jury trial in January, 1979, a decree was entered terminating Appellant's parental rights and appointing the Taylor County Child Welfare Unit managing conservator of the children.

The judgment of the trial court was affirmed by the Court of Civil Appeals, 11th Supreme Judicial District, at Eastland, Texas, on

October 4, 1979. The Supreme Court of Texas refused Appellant's Application for Writ of Error on January 23, 1980. Appellant's Motion for Rehearing was overruled on February 13, 1980.

Appellant then appealed to the Supreme Court of the United States pursuant to Title 28, U.S.C., Section 1257(2), maintaining that portions of Section 15.02 of the Texas Family Code are unconstitutionally vague and overbroad.

III.

ARGUMENT

Appellee contends that the question on appeal, i.e. the constitutionality of Section 15.02(1)(D) and (E) and 15.02(2) of the Texas Family Code, is so wanting in substance as to require no further argument to the Court. See Milheim v. Moffat Tunnel Improvement District, 262 U.S. 710, 716-17(1923); Ex parte Poresky, 290 U.S. 30,32(1933); and Cuyahoga River Power Co. v. Northern Ohio Traction & Light Co., 252 U.S. 388,397(1920).

A.
Section 15.02(2)

The major focus of Appellant's attack is the best interest standard set forth in Section 15.02(2). While Appellee agrees that standing alone and with no further interpretation this standard would be impermissibly vague and overbroad as the controlling standard in a suit to terminate parental rights, the best interest standard as used by the Texas courts functions as a protection for the parent against whom termination is sought.

Affirmative findings under both subsections of Section 15.02 are necessary to justify termination. Holley v. Adams, 544 S.W.2d 367, 370 (Tex. 1976); and Wiley v. Spratlin, 543 S.W. 2d 349, 351 (Tex. 1976). Section 15.02(1) sets forth specific behaviors which are sufficient grounds to justify termination. Section 15.02(2), containing the best interest standard, is an additional protection designed to preserve the family unit in cases in which special

circumstances mitigate or excuse the behaviors set forth in Section 15.02(1). It is not intended to proscribe specific conduct.

Further, a statute may be rescued from a finding of vagueness by state court decisions which set forth factors and criteria to be taken into account by the courts in making decisions under the statute. See Colten v. Kentucky, 407 U.S. 104 (1972). The best interest of the child standard has been elaborated upon by the Texas Supreme Court in the Holley case, supra, which lists nine factors the trial court should consider in determining the best interest of the child. The factors are:

(A) the desires of the child;
(B) the emotional and physical needs of the child now and in the future;
(C) the emotional and physical danger to the child now and in the future;
(D) the parental abilities of the individuals seeking custody;
(E) the programs available to assist these individuals to promote the best interest of the child;
(F) the plans for the child by the individuals or by the agency seeking custody;
(G) the stability of the home or proposed

placement;

(H) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and

(I) any excuse for the acts or omissions of the parent.

Holley v. Adams, supra at 372.

B.
Section 15.02(1)

Appellant also attacks Section 15.02(1)(D) and (E) as being impermissibly vague and overbroad. A non-criminal statute is unconstitutionally vague under the due process clause of the Fifth or Fourteenth Amendments only when its language does not convey sufficiently definite warning as to the conduct proscribed, when measured by common understanding or practice. Arnett v. Kennedy, 416 U.S. 134, 158-64 (1974); and United States v. Cardiff, 344 U.S. 174, 176 (1952). Before it will be struck down, a statute must be so vague that men of common intelligence must guess at its application. Giaccio v. Pennsylvania, 382 U.S. 399 (1966); and Connally v. General Construction Co., 269 U.S. 385, 391 (1926).

A finding of vagueness will result only where "the exaction of obedience to a rule or standard... is so vague and indefinite as really to be no rule or standard at all..." A.B. Small Co. v. American Sugar Refining Co., 267 U.S. 233, 239 (1925). See also Broadick v. Oklahoma, 413 U.S. 601, 607-08 (1973); and Arnett v. Kennedy, supra at 159-60

The sections of the termination statute at issue in this case provide fair warning of the type of conduct which will justify termination of parental rights. Section 15.02(1)(D) covers situations where the parent neglects a child by exposing him to conditions or surroundings which endanger the child either physically or emotionally, while Section 15.02(E) contemplates aggressive behavior toward the child which results in physical or emotional abuse. Higgins v. Dallas County Child Welfare Unit, 544 S.W.2d 745, 749 (Tex. Civ. App.--Dallas 1976), no writ. It is true that the trier

of fact must determine on a case by case basis whether the specific conduct or conditions involved endanger a child, but it would be impossible for the statute to set forth each act or surrounding which constitutes a danger to children. As previously stated by this Court, the vagueness doctrine "is not a principle designed to convert into a constitutional dilemma the practical difficulties in drawing...statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited." Colten v. Kentucky, 407 U.S. 104, 110 (1972).

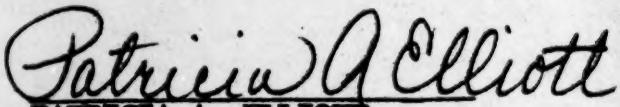
IV.

CONCLUSION

Wherefore, Appellee respectfully submits that the questions upon which this cause depend are so insubstantial as not to need further argument and Appellee moves the Court to dismiss this appeal or, in the alternative, to affirm

the judgment of the Supreme Court of Texas.

Respectfully submitted,



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FILED
AUG 11 1980
MICHAEL RODAK, JR., CLERK

NO. 79-1733

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

W. D. R.

Appellant

VS.

TAYLOR COUNTY CHILD WELFARE UNIT

Appellee

ON APPEAL FROM THE
TEXAS COURT OF CIVIL APPEALS
11TH SUPREME JUDICIAL DISTRICT

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

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NO. 791733

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1979

W. D. R.

Appellant

vs.

TAYLOR COUNTY CHILD WELFARE UNIT

Appellee

ON APPEAL FROM THE
TEXAS COURT OF CIVIL APPEALS
11TH SUPREME JUDICIAL DISTRICT

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

Appellant submits this, Appellant's brief in opposition to Appellee's Motion to Dismiss or affirm, and would re-emphasize the points she raised in her Jurisdictional Statement.

I. The Texas Statute controlling the involuntary termination of parental rights, Texas Family Code, Section 15.02, is so vague, indefinite, and overbroad as to deny Appellant fundamental due process and equal protection of the law as guaranteed by the United States Constitution.

It is well established that a parent's relationship with his/her children is one of the liberties protected by the United States Constitution. Quilloin v. Walcott, 434 U.S. 246, 255 (1978); Prince v. Massachusetts, 321 U.S. 158, 166 (1944); May v. Anderson, 345 U.S. 528, (1953). Only a compelling interest can justify a State's interference, if any, with family life, and a statute which intrudes upon the "private realm of family life" is subjected to careful examination. Moore v. City of East Cleveland, 431 U.S. 494, 499 (1977); Zablocki v. Redhail, 434 U.S. 374, 383 (1978); Roe v. Conn, 417 F. Supp. 769, 779 (M.D. Ala, 1976).

In promulgating a statute or standard that regulates the private realm of family life, the State is obligated to prescribe it with "a greater degree of specificity than in other contexts". Smith v. Goguen, 415 U.S. 566, 573 (1974).

Contrary to this basic demand and requirement, the Texas Statute is unconstitutionally vague and indefinite. Subsections (1)(D) and (E), Section 15.02, Texas Family Code, which were the basis of jury findings that terminated Appellant's parental rights, prohibit certain parental behavior, but in vague and indefinite terms which were never construed by Texas courts. Subsection (2) of Section 15.02 provides that "the best interest of the child" must be determined in addition to the grounds enumerated in Subsection (1), but nowhere in the Statute is the term, "best interest", defined or elaborated.

In its Motion to Dismiss or Affirm, Appellee (Taylor County Child Welfare Unit) frankly concedes that this Texas standard "would be impermissibly vague and overbroad as to the controlling standard in a suit to terminate parental rights." (p. 6, Appellee's Motion to Dismiss or Affirm). Appellee hurriedly adds, however, that the "vague and overbroad" standard was narrowed and elaborated by the Texas Supreme Court in Holley v. Adams 544 SW2d 367 (Tex. 1976), so as to meet the due process requirements.

In fact, Holley v. Adams lists things to consider in the determination of the "best interest" of the child, but obviously the list was not meant to define or narrow the "best interest" standard. A close examination of the Holley factors demonstrates that they are not any more specific or less vague than the statutory language of Section 15.02. For example, "the desires of the child" (A) is an empty phrase in case

of a very young child; "the emotional and physical" "needs" and "danger" in (B) and (C) are simply a tautological statement of Subsections (1) (D) and (E); "the programs available...to promote the best interest of the child" (E) is also a circular definition of the "best interest"; and "the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one" (H) is as vague as the "best interest" itself. It is clear, in other words, that the Holley interpretation cannot save the Texas Statute from vagueness, indefiniteness, and overbreadth.

As the Appellee concedes, a Statute cannot stand the constitutional scrutiny, "if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case." Giaccio v.

Pennsylvania, 382 U.S. 399, 402-403 (1966). See p. 8, Appellee's Motion to Dismiss or Affirm. Gelling v. Texas, 343 U.S. 960 (1952) stated that a city ordinance the language of which contained "of such character as to be prejudicial to the best interests of the people of said City" was unconstitutionally "vague and indefinite." Concurring opinion by Justice Frankfurter at 960. Recently, this Court suggested that "the best interests of the child" could be characterized as "vague". Smith v. Organization of Foster Families, 431 U.S. 816, 835, n. 36 (1977). Appellant contends that no criteria are offered by the Texas Statute for assessing the "best interest" of a child.

Indeed, in addition to such federal court cases as Alsager v. District Court of Polk County, 406 F. Supp. 10 (S.D. Iowa, 1975), aff'd 545 F.2d 1137 (8th Cir. 1976) and Roe v. Conn, supra, which invalidated State termination statutes on the grounds

of vagueness and indefiniteness, a few enlightened State Supreme Courts led the path in invalidating their parental right termination Statutes on the grounds of vagueness and indefiniteness. The Arkansas Supreme Court held that the Arkansas termination statute using the term, "a proper home", was "unconstitutionally vague", because it "does not provide sufficient guidelines to meet the due process requirements" of the United States Constitution and the Arkansas Constitution. Davis v. Smith, 583 SW2d 37, 40 (Ark. 1979). Quoting from Roe v. Conn, supra, the Court further stated, "Obviously, this is a question about which men and women of ordinary intelligence would greatly disagree. Their answers would vary in large measure in relation to their differing social, ethical, and religious views. Because these terms are too subjective to denote a sufficient warning to those individuals who might be affected by their prescription, the Statute is unconstitutionally

vague." Davis v. Smith, supra, at 43-44.

The Nebraska Supreme Court held the state termination statute which adopts the test of "the best interest and welfare of the children," "being vague and lacking in adequate and understandable standards of conduct to which parents should conform so as not to risk the termination of parental rights, violates the due process requirements...and is therefore unconstitutional and void." Linn v. Linn, 286 N.W.2d 765 (Neb. 1980).

These decisions are based upon many of the same authorities and arguments Appellant has provided this Court in her Jurisdictional Statement attacking Section 15.02 of the Texas Family Code. Other States besides Arkansas and Nebraska are also moving toward an effective resolution of vague and impermissible tests in their termination Statutes. For example, the Michigan Statute contains a good faith

attempt to define the term, "best interest of the child." Michigan Comp. Laws Ann. § 722.23 (Supp. 1976).

The trend seems obvious. It is apparently moving toward the direction of invalidating vague and indefinite termination statutes. It is obvious that the Texas termination statute as well as those of other States will be invalidated sooner or later. But, in the meantime, a countless number of parents and children will be subjected to such unconstitutional statutes. It will take a long time to invalidate these State statutes on a State-by-State piecemeal basis. Therefore, it is highly desirable and advisable that the United States Supreme Court halt and correct this unhappy situation by invalidating such State statutes at one stroke.

CONCLUSION

For the reasons stated in the Jurisdictional Statement and in this Brief in opposition, the appeal of the cause should not be decided summarily but should be set for plenary hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, William D. Dupree, a member of the Bar of the Supreme Court of the United States and Counsel of Record for Willa Dene Roberts, Appellant herein, hereby certify that on the 8 day of August, 1980, the original and forty copies of the foregoing Appellant's Brief in Opposition to Appellee's Motion

To Dismiss or Affirm has been mailed to the Clerk of the United States Supreme Court for inclusion with the papers of said cause, and additionally, three (3) copies of said Brief were mailed to:

Ms. Sharon Johnson
Attorney for Appellee
Assistant District Attorney
Taylor County Courthouse
Abilene, Texas 79602

Hon. Mark White
Attorney General
State Capitol
Austin, Texas 78711

by depositing such copies in the United States Mail, Fort Worth, Texas, with First Class Postage, prepaid, properly addressed to the Post Office Addresses of the said Clerk, U. S. Supreme Court, Sharon Johnson, Attorney of Record for Apoellee, and the Honorable Mark White, Attorney General, State of Texas, at Austin, Texas. All parties required to be served have been served.

DATED this 8 day of August, 1980.

William D. Dupree